

Message Text

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ACTION EA-12

INFO OCT-01 IO-13 ISO-00 AID-05 CIAE-00 COME-00 EB-08
FRB-03 INR-10 NSAE-00 ICA-11 TRSE-00 XMB-02
OPIC-03 SP-02 LAB-04 SIL-01 OMB-01 NSC-05 SS-15
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FM AMEMBASSY TOKYO
TO SECSTATE WASHDC PRIORITY 7713
INFO USMISSION GENEVA

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USMTN

E.O. 11652: NA
TAGS: EIND, EINV, BGEN, JA
SUBJECT: MITI INVESTIGATES ALLEGED UNFAIR SALES
PRACTICES BY IBM-JAPAN

1. SUMMARY: MITI HAS STARTED INVESTIGATION INTO ALLEGATIONS THAT IBM-JAPAN ENGAGED IN AN UNFAIR TRADE PRACTICE BY TRYING TO SELL CUSTOMERS THE "E" SERIES COMPUTERS OF ITS YET UNANNOUNCED "FUTURE SERIES". MITI FEELS IBM-JAPAN MAY HAVE VIOLATED BOTH U.S. ANTITRUST LAWS AND JAPANESE ANTIMONOPOLY LAW. BUT JAPAN FAIR TRADE COMMISSION (JFTC) HAS CONCLUDED THAT IBM-JAPAN HAS NOT VIOLATED LAW. IBM-JAPAN SAYS SOME 30 EMPLOYEES IN THE OSAKA AREA HAVE BEEN SUSPENDED FOR VIOLATING THE COMPANY'S STRICT PROHIBITION AGAINST PRE-ANNOUNCEMENT SELLING. MITI IS REPORTED TO BE CONSIDERING NEW ADMINISTRATIVE MEASURES AGAINST IBM-JAPAN AND THERE IS SPECULATION THAT MITI IS USING INCIDENT AS EXCUSE TO FURTHER PROTECT OTHER DOMESTIC MANUFACTURERS. END SUMMARY.

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2. MITI AND THE JAPAN FAIR TRADE COMMISSION (FTC) ARE CONDUCTING INVESTIGATIONS INTO ALLEGATIONS THAT IBM'S WHOLLY-OWNED SUBSIDIARY, IBM-JAPAN, HAS BEEN USING UNFAIR SALES TACTICS IN JAPAN. IT IS ALLEGED THAT FROM LATE 1977 TO FEBRUARY OF 1978 IBM-JAPAN SALESMEN TRIED TO SELL THE "E" SERIES COMPUTERS OF THE IBM'S YET TO BE ANNOUNCED "FUTURE SERIES" WITH THE PROMISE THAT ALTHOUGH

THE "E" SERIES IS CONSIDERED MEDIUM TO SMALL IN THE "FUTURE SERIES", IT WILL BE AS EFFICIENT AS THE LARGER SIZED MODELS OF IBM'S 370 SERIES.

3. PRESS REPORTS SAY MITI QUESTIONED IBM-JAPAN PRESIDENT SHIINA WHO STATED THAT AN INTERNAL INVESTIGATION FOUND THAT THE ALLEGED SALES ACTIVITIES HAD BEEN ENGAGED IN BY ABOUT 36 EMPLOYEES AND THAT THESE EMPLOYEES HAD BEEN SUSPENDED AND GIVEN PAY CUTS. SHIINA CLAIMS THE INCIDENT WAS CAUSED BY SOME SALESMEN ACTING ON THEIR OWN IN VIOLATION OF IBM-JAPAN'S STRICT PROHIBITION AGAINST PREANNOUNCEMENT SELLING. PRESS REPORTS SAY MITI ASKED IBM TO CONDUCT A THOROUGH INVESTIGATION OF THE INCIDENT BECAUSE "THE INCIDENT CANNOT BE IGNORED IN CONSIDERATION OF ITS INDUSTRIAL POLICY" AND BECAUSE OF COMPLAINTS THAT JAPANESE MANUFACTURERS HAD SUFFERED INJURY. WHEN THE INVESTIGATION IS OVER, MITI REPORTEDLY WILL RECONSIDER ITS COMPUTER INDUSTRY POLICY AND ISSUE NEW ADMINISTRATIVE MEASURES CONCERNING IBM-JAPAN.

4. WHEN CONTACTED BY THE EMBASSY, IBM-JAPAN'S PUBLIC RELATIONS OFFICE STATED THAT SOME SALESMEN HAD GONE BEHOND IBM'S "BUSINESS CONDUCT GUIDELINES" WHICH STRICTLY PROHIBIT PRE-ANNOUNCEMENT SALES. HE CONFIRMED PRESS REPORTS THAT ABOUT 30 EMPLOYEES HAD BEEN PUNISHED FOR VIOLATION OF THE GUIDELINES.

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5. IN THE REVERSE OF ITS USUAL ROLES AS DEFENDER OF INDUSTRY, MITI IS TAKING A HARD LINE TOWARD IBM-JAPAN AND FEELS THAT SINCE IBM-JAPAN IS OWNED BY IBM, U.S. ANTI-TRUST LAWS MAY APPLY EVEN THOUGH THE ALLEGED ACTIVITIES ARE BY A JAPANESE CORPORATION IN JAPAN. EVEN THOUGH IT APPEARS THAT IBM-JAPAN IS NOT IN VIOLATION OF ANY JAPANESE LAW, MITI IS PUSHING THE INVESTIGATION TO SEE IF THEY HAVE VIOLATED U.S. LAWS. THE JFTC, WHICH USUALLY TAKES A HARD LINE IN CASES SUCH AS THIS, APPEARS TO FEEL THAT SINCE IBM-JAPAN HAS ONLY ABOUT 30 PERCENT OF THE JAPANESE MARKET AND PRE-ANNOUNCEMENT SELLING IS NOT AN UNCOMMON PRACTICE AMONG JAPANESE OWNED COMPUTER MANUFACTURERS, IBM-JAPAN IS PROBABLY NOT IN VIOLATION OF THE JAPANESE ANTI-MONOPOLY LAW. PRESS REPORTS SAY MITI PLANS TO DISCUSS THE EXTRA-TERRITORIAL APPLICATION OF U.S. ANTI-TRUST LAW WITH U.S. ANTITRUST OFFICIALS WHO ARE SCHEDULED TO VISIT JAPAN LATER THIS MONTH.

6. DOMESTIC MANUFACTURERS ACCORDING TO PRESS, ARE NOT UNIVERSALLY HAPPY ABOUT MITI'S MOVE AGAINST IBM. THEY FEAR

THE U.S. GOVERNMENT MAY RETALIATE AT THE MTN NEGOTIATIONS
BY POINTING OUT THE GOJ'S DISCRIMINATORY POLICY AGAINST
IBM-JAPAN, DUMPING ABROAD BY JAPANESE COMPUTER MANUFACTURERS
AND DISCRIMINATORY GOVERNMENT PROCUREMENT POLICY. ONE
SOURCE IS QUOTED AS SAYING "ALTHOUGH MITI INTENDS TO STOP
THE COMPUTER OFFENSIVE BY U.S. GOVERNMENT AND PRIVATE COM-
PANIES, IT LOOKS LIKE MITI IS AWAKING A SLEEPING DOG WHO
MAY BITE US."

7. COMMENT: IBM-JAPAN, ALTHOUGH A WHOLLY-OWNED SUBSIDIARY
OF IBM, CONSIDERS ITSELF A JAPANESE COMPANY AND HAS NOT
ASKED THE EMBASSY TO TAKE ANY ACTION CONCERNING MITI'S
THREATENED ACTION. EVEN THOUGH IBM-JAPAN'S STAFF IS ALL
JAPANESE EXCEPT FOR A FEW ENGINEERS IN TECHNICAL JOBS,
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AND MOST OF THE PRODUCTS SOLD ARE MANUFACTURED DOMESTICALLY

IN JAPAN, IT HAS BEEN CONSIDERED "FOREIGN" BY MITI AND
GENERALLY NOT ALLOWED TO SELL TO MANY GOVERNMENT AND OTHER
USERS RESERVED FOR "DOMESTIC" MANUFACTURERS. FOR
STATISTICAL PURPOSES ITS SALES OF PRODUCTS ACTUALLY MADE

IN JAPAN ARE COUNTED BY MITI UNDER, SALES OF IMPORTED PRODUCTS. DESPITE THIS DISCRIMINATION, IBM-JAPAN IS THE PREDOMINANT COMPUTER SUPPLIER IN JAPAN AND HAS AN ESTIMATED 30 PERCENT OF THE MARKET.

8. TRADE SOURCES TELL US THEY ARE PUZZLED BY MITI'S HARD LINE STANCE IN THIS CASE AND ITS APPARENT DETERMINATION TO MAKE WHAT SEEMS TO BE AN ISOLATED INCIDENT INTO A MAJOR ISSUE. SPECULATION ABOUT MITI'S MOTIVE'S RANGE FROM A SUSPICION THAT MITI WANT TO USE THIS INCIDENT AS AN EXCUSE TO FURTHER RESTRICT IBM-JAPAN'S SALES THROUGH ADMINISTRATIVE MEASURES TO A MITI HOPE THAT THE U.S. WILL USE THIS INCIDENT TO BREAK UP IBM, THUS MAKING JAPANESE MANUFACTURERS MORE COMPETITIVE IN THE U.S. AND WORLD MARKETS. NONE OF THE SPECULATION OFFERED SO FAR, HOWEVER, MAKES LIMITED OFFICIAL USE

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MUCH SENSE. MR. SHIINA IS CURRENTLY IN THE U.S. FOR A PREVIOUSLY SCHEDULED MEETING BUT WILL BE FURTHER QUESTIONED BY MITI UPON HIS RETURN. WE WILL WATCH THE SITUATION CLOSELY TO SEE WHAT FORM MITI'S THREATENED "ADMINISTRATIVE MEASURES" TAKE.

9. SINCE PRESS REPORTS SAY THIS CASE WILL BE BROUGHT UP IN THE UP-COMING TALKS BETWEEN MITI AND JUSTICE DEPARTMENT OFFICIALS, PLEASE BRING THIS CABLE TO THE ATTENTION OF ASSISTANT ATTORNEY GENERAL SHENEFIELD. MANSFIELD

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